

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

<b>Wendling Quarries, Inc.,</b> Petitioner-Appellant,  <b>v.</b>  <b>City of Cedar Rapids Board of Review,</b> Respondent-Appellee.	<b>ORDER</b>  <b>Docket No. 11-101-1194</b> <b>Parcel No. 19073-26003-00000</b>
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On January 17, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Wendling Quarries, Inc. is represented by attorney Glenn Bartelt of Schoenthaler, Roberg, Bartelt & Kahler, Maquoketa, Iowa. City Attorney Jim Flitz and Assistant City Attorney Mohammad Sheronick are counsel for the Cedar Rapids Board of Review. City Assessor Scott Labus represented the Board of Review at hearing by telephone. Both parties submitted evidence in support of their position. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Wendling Quarries, Inc. appeals from the City of Cedar Rapids Board of Review decision reassessing its property located at 4951 Edgewood Road SW, Cedar Rapids, Iowa. According to the property record card, the subject property is a 37.97-acre site improved by two office buildings totaling 720 square feet, a 48 square-foot metal deck, a 132 square-foot metal deck, and a 12 square-foot metal canopy. The site is also improved by a 70-foot by 11-foot, 60-ton capacity, concrete-top, pitless truck scale with concrete approaches and piers. The real estate was classified commercial on the initial assessment of January 1, 2011, and valued at \$212,423, representing \$116,872 in land value and \$95,551 in improvement value. The truck scale, which is disputed as personal property versus real

property, accounts for \$71,062 of the improvement value. The property record card indicates that twelve-percent physical depreciation was applied to the scale.

Wendling Quarries protested to the Board of Review on the grounds that the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(a)(2); that the property is not assessable under section 441.37(1)(a)(3) because modern at or above-grade truck scales are personal property; and that there is an error in the assessment under section 441.37(1)(a)(4) because machinery and equipment were improperly treated as taxable improvements. It sought to have the truck scale treated as exempt personal property and the assessment be reduced to a total value of \$141,361, which would reflect that exemption.

The Board of Review granted the protest, in part, and reduced the assessment to \$204,511, allocated as \$116,872 in land value and \$87,639 in improvement value.

Wendling Quarries then appealed to this Board reasserting its claims. While Wendling concedes the poured concrete foundation, piers, and approaches are taxable as real property, it contends the truck scale at the subject property is personal property.

Wendling Quarries called three witnesses at hearing: Jeff Derlein, owner and president of Derlein Scale, Inc. in Blainstown, Iowa; Rich White, Executive Director of the Iowa Limestone Producers Association; and John Tuthill, property manager for Wendling Quarries at the subject property. Their relevant testimony is summarized as follows.

Jeff Derlein testified Derlein Scale, Inc. installs, repairs, and services all types of scales. Its trade territory is the eastern half of Iowa. Derlein testified a lot of his work includes quarry business, and he is familiar with the use of industrial scales in the quarry industry. He installed the subject scale in the late 1990s and continues to service it. Derlien testified the subject scale has an approximate 20-year life. This is the second scale at the subject property. It was installed by reusing the existing piers, which are approximately 25-30 years old.

Derlein explained the installation process for these types of scales. First, four main concrete piers, two approach ramps, and three wash-out slabs located between the piers are installed to serve as a foundation for the scale parts. Steel plates are bolted to the piers by concrete anchors. The scale consists of three modules with sensors or load cells in each cavity. There are a total of eight load cells in the subject scale. The three modules are linked together by bolts and I-beams are suspended in the center and rest on the end piers to support the structure. A crane is used to lift the steel plates from the truck and put them in place. Concrete is then poured into the deck modules. Highway guardrails are installed in the ground along the sides of the scale.

Derlein testified that a new scale like the subject would cost approximately \$52,000 to install including labor, materials, and setup. The concrete piers and approaches account for approximately \$19,500 of the total cost. The scale components and installation account for the remaining \$32,500. He reports most of the labor is in the foundation, with less labor on the scale. In Derlein's opinion, the subject scale is currently worth approximately \$8000 to \$12,000.

Derlein characterized moving the scale as a simple process, which requires reversal of the installation process. It also requires a 40-ton crane at \$1000 rental cost, one or two trucks, a three-man crew, and four hours at \$800 to \$1000 in labor costs to disassemble and load the scale. Derlein indicated that two trucks would be required to move the subject scale to handle the weight of its concrete-top. It would cost approximately another \$2000 to re-install it at a new location and there would also be transportation costs associated. Derlein reported the owner generally tears out the concrete piers and approaches after the scale is removed. He testified that there is a market for used scales. He said he would essentially act as a broker bringing together buyers and sellers in these types of sales if he was contacted.

Rich White reported the Iowa Limestone Producers Association has twenty-five members, which accounts for ninety percent of Iowa's limestone production. White explained that quarry

operators are required by the State to be licensed and bonded. He explained the purpose of the bond is to cover necessary land reclamation if a quarry would go out of business or abandon its site. He also explained there is a very specific process for reclamation, which is established by law. Essentially, the law requires the removal of all mining related waste products as well as buildings, structures, machinery and equipment after reserves or leases run out under the land reclamation statute. *See Iowa Administrative Code rules 60-60.80(208).*<sup>1</sup>

John Tuthill reported Wendling Quarries, a subsidiary of Manatt's Inc., has sixty-seven active quarries in Iowa, and owns fifty to sixty truck scales. Tuthill testified he has been in the industry sixteen years and does not recall Wendling Quarries ever abandoning or leaving a scale behind when relocating or closing an operation. He testified the scale, all its component parts, and the scale house are required to be removed during the reclamation process. The scale would either be stored or sold in the used scale market. He describes this in the petition to this Board, as usual and customary practice in the quarry industry.

Tuthill discussed Wendling Quarries' exhibits showing storage floater scales (Exhibit 10), an old pit scale (Exhibit 11), and scales of current industry standards (Exhibit 12 a-e). Tuthill testified that when doing road construction and paving projects; portable crushers and truck scales are taken to the site for use. The company has two "floater" scales in storage that it uses for this purpose. He said these are all above-grade pitless scales as distinguished from pit scales, which use drive-over poured concrete vaults and are not ordinarily removed. He considers the older pit style scales part of the real estate.

Tuthill also reported that over the past four or five years he has approached other assessors about the scales being personal property. According to Tuthill, Jackson, Linn, Cedar, Clinton,

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<sup>1</sup> Under this rule, all products and machinery "incompatible with the care and growth of vegetation shall be removed" from the site. Concrete and clay materials must be buried at least three feet below final grade and land affect by the mining process needs to be graded.

Johnson, Benton, and Muscatine Counties have exempted Wendling Quarries' at-grade scales from their real estate assessments. He testified the City of Cedar Rapids is the first jurisdiction to not exempt the scales as personal property.

City Assessor Scott Labus testified on behalf of the Board of Review. He believes general assessment duties under Iowa Code section 441.17(4) and advice from the Department of Revenue require Wendling Quarries' scale be assessable as real property.

Labus relies on a letter from Cary Halfpop, Chief Appraiser for the Property Tax Division of the Iowa Department of Revenue. The September 2012 letter was addressed to Dave Kubik, Dubuque County Assessor. Halfpop notes that "it is ultimately a factual determination for the Court or Board to decide whether these scales are structures or improvements or equipment attached to structures or improvements." Halfpop's opinion is that the scale is an improvement under Iowa Code section 427A.1(1)(c), and he concludes that pitless scales should be assessed as real property.

In Labus' experience, scales like the subject property generally stay on site; but, he acknowledged Wendling Quarries' evidence indicates it typically moves its scales. In his thirty-nine years of experience, he has found that scales are generally left on industrial sites, at elevators, grain handling companies, and feed mills. In Labus' experience and opinion, the property owner usually does not remove a scale when it leaves a site, but rather it remains for use by the next owner of that site or salvage. The Board of Review submitted a warranty deed detailing a 2012 transfer of a quarry, including a 60-ton scale, located at 4301 Old River Road SW, Cedar Rapids, Iowa. Labus testified that the sellers of this property did not take the scale with them and the scale remained at the quarry for use by the new quarry owners.

Labus offered a section from the *2008 Iowa Real Property Appraisal Manual (Manual)*. Page 4-36 provides pre-computed commercial values used to determine the costs of pit and pitless scales. Additionally, the Board of Review submitted the Department of Revenue's *Industrial Machinery and*

*Equipment Valuation Guide (Guide)* from 1984. Page 1-14 of the *Guide* indicates that “Scales (truck, railroad, and floor)” are to be considered buildings.

Ultimately, Labus believes the scale is an improvement and not equipment. He believes equipment is used to process raw materials or is used to move raw material from one part of a manufacturing establishment to another manufacturing establishment. He contends the scale here is not used in this manner and is therefore not equipment. Additionally, Labus believes Iowa Code section 427A.1(3), which exempts property such as the truck scale only if it would ordinarily be removed when an owner moves to another location, does not allow an assessor to look at the intent of a particular property owner’s decision to remove its scale when moving.

We agree with Labus and find Wendling has not demonstrated the subject scale would commonly be understood to be equipment. Therefore, the Board does not reach the question of whether the scale is ordinarily removed under section 427A.1(3).

Although we find the subject scale is not exempt from taxation, it appears the assessor’s office did not apply the correct amount of depreciation to the subject scale and for this reason the Board modifies the Board of Review’s decision. Using the stated unit price and map factor from the property record card, the Board believes a correct application of the *Manual* depreciation schedule would result in an assessment of approximately \$58,141 for the subject scale.<sup>2</sup>

### ***Conclusions of Law***

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

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<sup>2</sup> \$78,400 x 0.72 = \$56,448; \$56,448 x 1.03 = \$58,141

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin Cnty. Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

We construe statutes which impose taxes "liberally in favor of the taxpayer and strictly against the taxing body." *Iowa Auto Dealers v. Iowa Dep't of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). The language of the statute must indicate the tax assessed against the taxpayer was clearly intended. *Id.* In an exemption case, however, the Appeal Board "strictly construe[s] a statute and any doubt about an exemption is resolved in favor of taxation." *Carroll Area Child Care Center, Inc. v. Carroll Cnty. Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000); *Splash Enterprises, L.C. v. Polk Cnty. Bd. of Review* 807 N.W.2d 157, 2011 WL 3925415, at \*3 (Iowa App. 2011). It is therefore Wendling Quarries' burden to prove it is entitled to the benefit of the exemption. § 441.21(3); *Shermin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010).

Wendling Quarries claims the truck scale at the quarry should be considered personal property and exempt from taxation. The Board of Review, however, believes the subject scale is an improvement and therefore taxable as real property. In determining whether the truck scale here is real property or personal property that may qualify for an exemption, this Board must engage in a two-step analysis. First, we are required to determine if the truck scale falls under Iowa Code section 427A.1(1)(c) or (d). If the Board finds the property falls under paragraph ‘c’ as a “building[], structure[] or improvement[] . . . constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation,” then the scale is assessable as real property because whether the property is ordinarily removed is irrelevant. *Rose Acre Farms, Inc. v. Bd. of Review of Madison Cnty.*, 479 N.W.2d 260, 263 (Iowa 1991). Attachment is not a necessary requirement for taxation under paragraph ‘c’. *Id.* If, however, the Board finds the scale is a “building[], structure[], equipment, machinery or improvement[] . . . attached to the buildings, structures, or improvements defined in paragraph ‘c’,” then we must proceed to the second step of the analysis. The second step would require the Board to determine if the scale qualifies for an exemption from the definition of ‘attached’ under section 427A.1(3) as the “kind of property which would ordinarily be removed when the owner of the property moves to another location.”

A. Whether the subject property – Wendling Quarries’ scale – falls under Iowa Code section 427A.1(1)(c) or (d)?

The parties agree the concrete piers and approaches fall within section 427A.1(1)(c). However, they disagree as to whether the scale components fall under paragraph ‘c’ or ‘d’. The Board of Review argues that the scale fits within section 427A.1(1)(c) as an improvement “constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation.”

Wendling Quarries argues the scale is equipment under paragraph ‘d’ attached to the property described in paragraph ‘c’.



A determination under paragraphs ‘c’ or ‘d’ necessarily requires this Board to characterize the scale as a building, structure, improvement, machinery, or equipment. A building has been defined as “[a] structure with walls and a roof, esp[ecially] a permanent structure.” BLACK’S LAW DICTIONARY 207 (8th ed. 1990). A structure is “any construction, production, or piece of work artificially built up or composed of parts purposely joined together.” *Id.* at 1464. An improvement is “an addition to real property, whether permanent or not; esp[ecially] one that increases its value or utility or that enhances its appearance.” *Id.* at 773. When considering another case under this provision, the Iowa Supreme Court found billboards were structures or improvements. *Western Outdoor Advertising Co., v. Bd. of Review of Mills Cnty.*, 364 N.W.2d 256 (Iowa 1985). The billboards were described as being constructed of wood poles inserted into the ground; mounted on poles set in concrete; or set in compacted earth; the majority of which were three and one-half feet deep. *Id.* at 257.

The poles are sealed so that they can be used again at another location. The poles are fastened together with wooden stringers, and the display, which consists of plywood panels, is then affixed to the stringers.

*Id.*

On the other hand, equipment includes “the articles or implements used for a specific purpose or activity.” BLACK’S LAW DICTIONARY 578. In the context of industrial real estate classification, the Department of Revenue has defined machinery as “equipment and devices, both automated and nonautomated, which is used in manufacturing.” IOWA ADMIN. CODE r. 701-71.1(6)(b) (2012) (citing *Deere Manufacturing Co. v. Beiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956)). Quarries have previously been found not to be manufacturers under 427A. *River Products Co. v. Bd. of Review of Washington Cnty.*, 332 N.W.2d 116 (Iowa Ct. App. 1982). In *Rose Acre Farms*, the Supreme Court found that cages, a feeding and watering system, an egg collection system, manure removal system, and bulk bins used by an egg production facility constituted equipment or machinery. 479 N.W.2d at 263. The case discussed how the whole system was integrated and highly automated. *Id.* at 261. “The

feed and water are delivered automatically, and the eggs are gathered the same way.” *Id.* “The disputed items were brought in and put together much like an erector set.” *Id.* Ultimately the court concluded that “the disputed items would commonly be understood to be equipment or machinery.” *Id.* at 263.

Only twice has the Iowa Supreme Court had occasion to examine the meaning of equipment in the context of section 427A.1(1)(c) and (d). *Id.*; *Western Outdoor Advertising Co.*, 364 N.W.2d 256. From these cases, the Court has established the guiding principle for characterization of property under section 427A.1(1)(c) or (d) is how the property would “commonly be understood.” *Rose Acre Farms*, 479 N.W.2d at 263. It is with this phrase that lower courts and this Board have been left to decide whether property is or is not equipment. *Manatt’s Concrete Co., v. Bd. of Review of Buchanan Cnty.*, No. EQCV05044 (D. Ct. Buchanan Cnty. Apr. 26, 2005) (B. Zager presiding).

Here, the Board finds this pit-less truck scale falls under paragraph ‘c’ as a “building[], structure[] or improvement[] . . . constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation.” The scale’s physical characteristics, the functional utility it provides to the quarry site, and the scale’s relative permanence at the quarry site make this scale more like an improvement than equipment. The testimony and evidence established this scale is 70-feet-by-11-feet, has an eight-inch thick concrete top, and would require the use of a crane and two trucks if it were ever removed. The scale is placed upon concrete piers that serve as its foundation.

The scale increases the functional utility of the quarry site, as it is used along with other real and personal property in the weighing of extracted material. Although the scale contains electronic components, it does not engage in the processing or moving of any material and is not automated like the equipment in *Rose Acre Farms*. Rather, the scale is more akin to the billboards in *Western Outdoor Advertising Co.*, which also did not actively engage in any mechanized process.

Finally, the scale was installed in the late 1990s, is still used at the site, and has a useful life of approximately twenty years. Given all of these considerations, we cannot conclude the subject scale would commonly be understood to be equipment or machinery.

This finding is supported by the *Iowa Real Property Appraisal Manual*, which provides cost information for both pit and pitless scales. The Board does not believe the inclusion of property in the *Manual* is always determinative in an exemption case, particularly since the *Manual* includes property that is exempt from assessment. See *Manual* pp. 4-46, 6-99 (when providing cost information on potentially exempt property, the *Manual* indicates the property may not be assessable). But we also recognize the Director of the Department of Revenue is under a duty to issue the *Manual*, which assessors are obligated to follow. §§ 421.17(17), 441.21(1)(h). Likewise, the court has acknowledged “longstanding administrative interpretations are entitled to some weight in statutory construction.” *Gen. Elec. Co. v. Iowa State Bd. of Tax Review*, 702 N.W.2d 485, 489 (Iowa 2005).

B. Whether the scale is ordinarily removed when the owner of the property moves to another location?

Having found the scale falls under section 427A.1(1)(c), we need not reach a conclusion of whether the scale falls within the exception to the definition of ‘attached’ provided by 427A.1(3). *Rose Acre Farms*, 479 N.W.2d at 263.

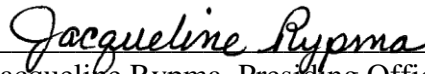
The Board, however, finds the subject scale is over-assessed due to the incorrect application of the *Manual*’s depreciation schedule. Page 5-17 of the *Manual* indicates annual depreciation on a scale in normal condition is two-percent, up to a maximum of sixty-percent. The property record card lists the subject scale’s age as “1997,” but applies only twelve-percent depreciation. Using the stated unit price and map factor, we believe a correct application of the *Manual* depreciation schedule would result in an assessment of approximately \$58,141 for the subject scale.

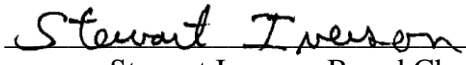
Therefore, we modify Wendling Quarries' property assessment as determined by the Board of Review. The Appeal Board determines the property assessment value as of January 1, 2011, is \$191,590, representing, \$116,872 in land value and \$74,718 in improvement value.


THE APPEAL BOARD ORDERS that the January 1, 2011 assessment as determined by the City of Cedar Rapids Board of Review is modified as set forth herein.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Linn County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcel shall be corrected, accordingly.

Dated this 2nd day of May, 2013.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair


  
Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>May 2, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	